HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 303 of 2004 (MS)

Birendra Dutt Saklani & others ….. Petitioners

Versus

Commissioner Garhwal Division & another …… Respondents

Sri I.P. Gairola, Advocate for the petitioner
Standing Counsel for the respondents.

Dated: 21.4.2004

Hon'ble Rajesh Tandon, J.

Heard the learned counsel for the parties.

By the present writ petition the petitioners have prayed for the issue of a writ in the nature of certiorari quashing the order dated 5.2.2004 passed by the Commissioner, Garhwal Division, Pauri Garhwal.

Briefly stated the facts giving rise to the present writ petition are that respondent no.2 has field a Revenue Suit no. 64 of 1998 in the Court of Assistant Collector, Tehri Garhwal. The petitioners have moved an application on 16.7.2003 for cross-examination of remaining witnesses which was rejected vide order dted 11.8.2003. The petitioner has preferred a revision before the Commissioner, Garhwal Division, which was also rejected on the ground that the petitioner has not given any summon to P.W.4 for cross examination. The revisional court has mentioned to the following effect:

आपेक्षित आदेष दिनांक 11.8.2003 के अवलोकन से स्पष्ट है कि पी0डबलू04 से जिरह हेतु प्रतिवादीगण (निगरानीकर्ता) द्वारा कोई समन नही दिया गया केवल वादी से जिरह हेतु समन दिये गये थे। उक्त आदेष द्वारा निगरानीकर्ता (प्रंतिवादी) के प्रार्थनापत्र दिनाक 16.7.2003 पर विधि व्यवस्थाओं के आलोक में गुणावगुण के आधार पर आदेष पारित किया गया जिसमें किसी हस्तक्षेप की आवष्यकता नही है।

The trial Court has rejected the application of the petitioner for recall of the witness for cross examination merely on technicalities and the revisional court has also upheld the same view. It is settled law that technicalities should not come in the way of dispensation of justice.

Considering the facts and circumstances of the case, the petitioner is at liberty to file a proper application before the trial Court for cross examination of P.W.4 and the same shall be disposed of without any technicalities.

Consequently the writ petition under Article 227 of the Constitution of India being not maintainable as the same has been filed against the interlocutory order, however, if the application is filed for the cross examination of P.W.4, the same shall be disposed of within a period of two weeks.

Subject to the aforesaid observations the writ petition is dismissed. No order as to costs.

(Rajesh Tandon J.)

21.04.2004
Dhyani